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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filled as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 8th December, 1972:—

BILL NO. 115 OF 1972

A Bill to amend the Industrial Development Bank of India Act, 1964.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Industrial Development Bank of India (Amendment) Act, 1972. Short title.

18 of 1964

2. In section 2 of the Industrial Development Bank of India Act, 1964 (hereinafter referred to as the principal Act),— Amendment of section 2.

(*a*) in clause (*c*), the words "or in the maintenance, repair, testing or servicing of machinery of any description or vehicles or vessels or motorboats or trailers or tractors, or in fishing, or in providing shore facilities for fishing or maintenance thereof" shall be added at the end;

(*b*) in clause (*i*), for the word "Madras", the words "Tamil Nadu" shall be substituted.

3. In section 9 of the principal Act, in sub-section (*1*),— Amendment of section 9.

(*a*) in clause (*a*),—

(*i*) in sub-clause (*i*),—

(*1*) after the words "any loans or advances granted to industrial concerns", the brackets and words "(including concerns engaged or to be engaged in the development of any contiguous area of land as an industrial estate)" shall be inserted;

(2) for the words "on the expiry of not less than three years and not more than twenty-five years", the words "within a period not exceeding twenty-five years" shall be substituted;

(*ii*) in sub-clause (*ii*),—

(*1*) after the words "any loans or advances granted to industrial concerns", the brackets and words "(including concerns engaged or to be engaged in the development of any contiguous area of land as an industrial estate)" shall be inserted;

(2) for the words "on the expiry of not less than three years and not more than ten years", the words "within a period not exceeding fifteen years" shall be substituted;

(*iii*) in sub-clause (*iii*),—

(*1*) after the words "any loans or advances granted to industrial concerns", the brackets and words "(including concerns exporting products of industrial concerns)" shall be inserted;

(*2*) for the words "and are repayable on the expiry of not less than six months and not more than ten years", the words, brackets and letters "or the execution of any turn-key project outside India by any industrial concern as aforesaid or by any person in India, and, in any case, are repayable—

(*i*) within a period not exceeding twelve years in the case of persons outside India, and

(*ii*) within a period not exceeding fifteen years in other cases,"

shall be substituted;

(*b*) in clause (*b*), for the words "promissory notes of industrial concerns", the words "promissory notes made, drawn, accepted or endorsed by industrial concerns or by any person selling capital goods manufactured by one industrial concern to another industrial concern" shall be substituted;

(*c*) in clause (*c*), for the words "any other financial institution", the words "any other financial institution, whether within or outside India," shall be substituted;

(*d*) in clause (*d*),—

(*i*) in the proviso, for the words "which may at the option of the Development Bank be convertible", the words "the amounts outstanding thereon may be convertible at the option of the Development Bank" shall be substituted;

(*ii*) after the proviso, the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this clause, the expression "the amounts outstanding thereon" used in relation to any loan or advance, shall mean the principal, interest and other charges payable on such loan or advance as at the time when the amounts are sought to be converted into stocks or shares.';

(*e*) after clause (*d*) and the Explanation thereto, the following clauses shall be inserted, namely:—

"(*da*) granting loans and advances—

(*i*) to any person exporting products of industrial concerns; or

(*ii*) to any person outside India, in connection with the export of capital goods from India; or

(*iii*) for the execution of turn-key projects outside India by any industrial concern or by any person in India;

(*db*) transferring for consideration any instrument relating to loans and advances granted by it to industrial concerns;";

(*f*) after clause (*k*), the following clause shall be inserted, namely:—

"(*ka*) acting as agent of—

(*i*) the Central Government or of the Reserve Bank, or

(*ii*) such other Government or person as the Central Government, on the recommendation of the Reserve Bank, may authorise;".

Insertion of new section 9A.

4. After section 9 of the principal Act, the following section shall be inserted, namely:—

Prohibited business.

'9A. (*1*) The Development Bank shall not enter into any kind of business with any industrial concern, of which any of the directors of the Development Bank is a proprietor, partner, director, manager, agent, employee or guarantor, or in which one or more directors of the Development Bank together hold substantial interest:

Provided that this sub-section shall not apply to any industrial concern if any director of the Development Bank—

(*i*) is nominated as a director of the Board of such concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law; or 1 of 1956.

(*ii*) is elected on the Board of such concern by virtue of shares held in the concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law, 1 of 1956.

by reason only of such nomination or election, as the case may be.

Explanation.—"Substantial interest", in relation to an industrial concern, means the beneficial interest held by one or more of the directors of the Development Bank or by any relative [as defined in clause (*41*) of section 2 of the Companies Act, 1956] of such director, whether singly or taken together, in the shares of the industrial concern, the aggregate amount paid up on which either exceeds five lakhs of rupees or five per cent of the paid-up share capital of the industrial concern, whichever is the lesser.

1 of 1956.

(*2*) The provisions of sub-section (*1*)—

(*i*) shall not apply to any industrial concern as specified therein if the Development Bank is satisfied that it is necessary in the public interest to enter into business with that concern, and entering into any kind of business with such industrial concern shall be in accordance with and subject to such conditions and limitations as may be prescribed;

(*ii*) shall not apply to any transaction relating to the business entered into prior to the commencement of the Industrial Development Bank of India (Amendment) Act, 1972, and all such business and any transaction in relation thereto may be implemented or continued as if that Act had not come into force;

(*iii*) shall apply only so long as the conditions precedent to such disability as set out in the said sub-section continue.'.

Insertion of new section 11A.

5. After section 11 of the principal Act, the following section shall be inserted, namely:—

Power to transfer rights.

"11A. The rights and interests of the Development Bank (including any other rights incidental thereto) in relation to any loan or advance granted, or any amount recoverable, by it may be transferred by the Development Bank, either in whole or in part, by the execution or issue of any instrument or by the transfer of any instrument by endorsement, or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred, and the Development Bank may, notwithstanding such transfer, act as the trustee for the transferee.".

Amendment of section 12.

6. In section 12 of the principal Act, for sub-section (*3*) and sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*3*) All loans and advances granted by the Development Bank out of foreign currency borrowed under sub-section (*1*) shall be expressed in terms of foreign currency as equivalent of Indian currency, calculated in accordance with the rate of exchange prevailing at the time of grant thereof, and the amount due thereunder shall be repayable in equivalent Indian currency, calculated in accordance with the rate of exchange prevailing at the time of repayment of such loan or advance.

(*4*) Any loss or profit in connection with any borrowing of foreign currency under sub-section (*1*) for the purpose of granting loans and advances under this Act or with its repayment to the concerned foreign lending agency, on account of any fluctuations in the rate of exchange accruing—

(*a*) during the period within which the loan or advance is repayable by the industrial concern or the period of actual repayment thereof by the concern, whichever is longer, shall be reimbursed by, or paid to, as the case may be, the recipients of such loans and advances;

(*b*) after the expiry of the period specified in clause (*a*),—

(*i*) shall be borne by the Development Bank in respect of normal market fluctuations in foreign exchange;

(*ii*) shall be reimbursed by, or paid to, as the case may be, the Central Government in respect of fluctuations other than the normal market fluctuations in foreign exchange.

Explanation.—If any question arises as to whether any fluctuation as aforesaid is a normal market fluctuation or not, the same shall be decided by the Central Government whose decision thereon shall be final.".

Insertion of new section 30A.

7. After section 30 of the principal Act, the following section shall be inserted, namely:—

Arrangement with Development Bank on appointment of directors to prevail.

"30A. (*1*) Where any arrangement entered into by the Development Bank with an industrial concern provides for the appointment by the Development Bank of one or more directors of such industrial concern, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the industrial concern, and any provision regarding share qualification, age-limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Development Bank in pursuance of the arrangement as aforesaid. 1 of 1956.

(*2*) Any director appointed as aforesaid shall—

(*a*) hold office during the pleasure of the Development Bank and may be removed or substituted by any person by order in writing of the Development Bank;

(*b*) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(*c*) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.".

Amendment of section 37.

8. In section 37 of the principal Act, in sub-section (*2*), after clause (*d*), the following clause shall be inserted, namely:—

"(*da*) entering into business with industrial concerns specified in sub-section (*1*) of section 9A and the conditions and limitations in regard thereto;".

STATEMENT OF OBJECTS AND REASONS

It has been found from experience gained by the Industrial Development Bank of India in its working, since its establishment in 1964, that it is necessary to amend the Act in certain respects.

2. The definition of 'industrial concern' under section 2(c) of the Act is proposed to be enlarged to include establishments engaged in maintenance and repairs of vehicles as well as concerns engaged in fishing or in the maintenance of shore facilities for fishing, so as to enable the Industrial Development Bank of India to play its role effectively in all fields as an apex institution for financing and refinancing other institutions.

3. Section 9 of the Act dealing with the scope of the business of the Development Bank is proposed to be enlarged in several respects. The Development Bank, at present, refinances loans and advances granted by the Industrial Finance Corporation of India, State Financial Corporations, scheduled banks and State Co-operative Banks to industrial concerns. Since some of these institutions give loans and advances for the establishment of industrial estates also, but are unable to do so adequately from within their own limited resources, it is proposed to authorise the Development Bank to refinance these institutions in relation to such activities.

4. At present the Development Bank is empowered to refinance loans given by the State Financial Corporations, the Industrial Finance Corporation of India, the commercial banks and the co-operative banks for the export of machinery and merchandise. It is now proposed to extend these facilities of refinance to the institutions financing the agencies exporting manufactured capital goods and to the concerns or persons in India executing turn-key jobs in foreign countries. The refinancing facilities extended by the Development Bank are now restricted to the cases where the primary lending institution advances loans repayable within a period of ten years in all cases. It is now proposed to liberalise this provision to cases where the primary lending institutions grant loans to persons in India repayable within a period of 15 years and to persons outside India repayable within a period 12 years.

5. The Development Bank can now accept, discount or rediscount bills of exchange and promissory notes of industrial concerns only. It is proposed to extend this facility to stockists or agents who sell plant and machinery of manufacturing concerns. The Act enables the Development Bank to subscribe to shares and debentures of the Industrial Finance Corporation of India, the State Financial Corporations and any other financial institutions notified by the Central Government in this behalf. It is now proposed to enlarge the power so as to enable the Development Bank to participate in the share capital of notified financial institutions promoted outside India as well.

6. In the field of exports, it is now proposed to enable the Development Bank to grant loans and advances to any persons exporting products of industrial concerns or to any person outside India in connection with the export of capital goods from India, or for the execution of turn-key projects, outside India by any industrial concern or by any person in India. Financial assistance will therefore be available to parties outside India for importing capital goods from India and also for

any activity in connection with it. The Development Bank is also being authorised to perform certain agency functions.

7. By a new section 9A, it is proposed to prohibit, subject to certain exceptions, the Development Bank from granting assistance to industrial concerns in which any director of the Development Bank may be having a beneficial interest. The Development Bank is the only institution capable of financing very large projects in the core and heavy investment sectors. It is, therefore, provided that the prohibition may be relaxed in cases where the Development Bank is satisfied that it is necessary in the public interest to finance such an industrial concern if the assistance is given subject to such conditions and limitations as may be prescribed by the Development Bank with the prior approval of the Reserve Bank of India.

8. It is considered necessary to effect certain liberalisation in regard to the liability arising out of fluctuations in the rate of exchange during the period of repayment of the foreign currency loans borrowed by the Development Bank from foreign lending agencies. At present the liability arising out of fluctuations in foreign exchange is completely borne by the borrowing industrial concerns. It is now proposed that it need be borne by the borrowers only so long as they have not discharged their liability completely to the Development Bank. After that period the Development Bank will bear the losses arising out of the normal market fluctuations in foreign exchange and the Central Government will bear the losses in respect of fluctuations, such as devaluation of Indian currency or revaluation of foreign currency as may be adverse to Indian currency. Any profit arising from fluctuations in favour of Indian currency is also proposed to be similarly dealt with.

9. The Development Bank normally reserves the power to nominate one or more directors on the Boards of assisted concerns. The new section 30A is intended to enable the Development Bank to exercise the power effectively.

10. The Bill seeks to achieve these main objects. Opportunity has also been taken to incorporate some other amendments which are found necessary for the smooth working of the Development Bank and are of a consequential or procedural nature. The notes on clauses appended to the Bill explain the position thereof.

NEW DELHI; Y. B. CHAVAN.

The 29th November, 1972.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 10(34)-IFI/72, dated the 30th November, 1972, from Shri Y. B. Chavan, Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Industrial Development Bank of India (Amendment) Bill, 1972, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and for its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 2 provides for the enlargement of the definition of "industrial concern" so as to enable the Industrial Development Bank of India to cover a wider category of concerns. The word "Madras" used in section 2 is being substituted by the words "Tamil Nadu".

Clause 3 amends section 9 in several respects. In the field of refinancing, it enables the Development Bank to refinance loans and advances given by the Industrial Finance Corporation, the State Financial Coporations, the scheduled banks and the State Co-operative Banks—(i) to a concern for the establishment of industrial estates, (ii) to any agency for exporting manufactured capital goods, and (iii) to persons in India executing turn-key projects in foreign countries. It also liberalises the provision to include cases where the primary lending institutions grant loans or advances to persons in India repayable within a period of fifteen years and to persons outside India repayable within a period of twelve years, as against the period of ten years applicable to all persons at present.

It is proposed to extend the facility of the Development Bank in accepting, discounting and rediscounting bills of exchange and promissory notes to stockists and agents who sell capital goods manufactured by industrial concerns.

It enables the Development Bank to participate also in the share capital of financial institutions promoted outside India as may be notified by the Central Government.

In the field of direct finance, it is proposed to enable the Development Bank to grant loans and advances to any person exporting products of industrial concerns, and to any person outside India for importing capital goods from India and for any activity connected with it. This facility is also extended to turn-key projects outside India undertaken by an industrial concern or by a person in India. It empowers the Development Bank to transfer instruments relating to loans and advances to other institutions. Lastly, the Development Bank is being authorised to undertake certain agency functions on behalf of the Central Government or a State Government or the Reserve Bank or any person.

Clause 4 prohibits the Development Bank from granting assistance to any industrial concern in which any director of Development Bank may be having a beneficial interest. The prohibition is, however, proposed to be relaxed in cases where the Development Bank is satisfied that it is necessary in the public interest to grant assistance to such an industrial concern and the assistance is granted in accordance with and

subject to such conditions and limitations, as may be prescribed by regulations framed by the Development Bank with the previous approval of the Reserve Bank.

Clause 5 provides that in order to ease any constraints in the resources position of the Development Bank, it may transfer the instruments relating to loans and advances to other institutions.

Clause 6 liberalises section 12 of the Act in regard to the liability arising out of fluctuations in the rate of exchange during the period of repayment of foreign currency loans borrowed by the Development Bank from foreign lending agencies.

Clause 7 enables the Development Bank to exercise its power of nomination of directors on the Boards of assisted concerns more effectively.

Clause 8 is consequential to clause 4 of the Bill.

FINANCIAL MEMORANDUM

Clause 6 of the Bill seeking to amend sub-sections (3) and (4) of section 12 provides that the Central Government may, in certain circumstances, have to bear the loss in respect of fluctuations other than the normal market fluctuations in foreign exchange in respect of foreign currency loans borrowed by the Development Bank from the foreign lending agencies. It is, however, not possible at this stage to anticipate when and how such losses, which are to be borne by the Central Government, would arise nor to indicate the amounts which may be involved as the loss is contingent on fluctuations other than normal market fluctuations arising in foreign exchange between Indian and foreign currencies such as devaluation of Indian currency or revaluation of foreign currency. If and when such losses come to be borne by the Central Government, the same will have to be covered by appropriate budget sanction at the relevant time.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3(f) of the Bill provides that the Development Bank may be authorised to act as agent of a State Government or any person as the Central Government on the recommendation of the Reserve Bank may authorise.

2. Clause 4 of the Bill prohibits certain transactions with any industrial concern in which any director of the Development Bank may be having a beneficial interest. It is also provided that this prohibition shall not apply to such an industrial concern where the Development Bank is satisfied that it is necessary in public interest to enter into business with that concern and if it is done in accordance with and subject to such conditions and limitations as may be prescribed by regulations framed under section 37 of the Act.

3. Cause 8 is consequential to clause 4 of the Bill and empowers the Board of directors of the Development Bank to frame regulations with the previous approval of the Reserve Bank of India for matters relating to the conditions and limitations under which assistance could be granted to industrial concerns in which the directors may be beneficially interested.

4. The matters in respect of which power is conferred on the Central Government or on the Board under clauses 3, 4 and 8 of the Bill relate to the day to day administration of the Development Bank or to the implementation of the policy which is already embodied in the Bill and the delegation of legislative power is of a normal character.

BILL NO. 113 OF 1972

A Bill further to amend the Industrial Finance Corporation Act, 1948.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Industrial Finance Corporation (Amendment) Act, 1972. Short title.

2. In section 2 of the Industrial Finance Corporation Act, 1948 (hereinafter referred to as the principal Act),— Amendment of section 2.

15 of 1948.

(*a*) after clause (*b*), the following clause shall be inserted, namely:—

'(*ba*) "Court" means the High Court (or where there is no High Court and the powers of the High Court are exercised by the Court of Judicial Commissioner, such Court) within the local limits of whose jurisdiction the defendant or respondent carries on the whole or a substantial part of his business, and where the Central Government has, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empowered any Court of civil jurisdiction subordinate to the High Court to exercise all or any of the powers conferred by this Act, such Court;';

(*b*) in clause (*c*), for the words "any public limited company", the words "any limited company" shall be substituted;

(*c*) after clause (*f*), the following clause shall be inserted, namely:—

'(*ff*) "State co-operative bank" has the same meaning as in the Reserve Bank of India Act, 1934;'. 2 of 1934.

Amendment of section 4.

3. In section 4 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) On and from the commencement of the Industrial Finance Corporation (Amendment) Act, 1972, the authorised capital of the Corporation shall stand increased to twenty crores of rupees, divided into forty thousand shares of five thousand rupees each, and the shares representing the capital so increased may be issued, with the sanction of the Central Government, as and when the Corporation may deem fit.";

(*b*) in sub-section (*7*), after the words "the Development Bank", the words "the Reserve Bank" shall be inserted.

Amendment of section 10A.

4. In section 10A of the principal Act, in sub-section (*4*), the words "Central Committee" wherever they occur shall, subject to such grammatical variations and omission of cognate expressions as may be necessary, be omitted.

Amendment of section 11.

5. In section 11 of the principal Act, in sub-section (*4*), for the words "the Central Committee or any other Committee", the words "any Committee" shall be substituted.

Omission of section 14.

6. Section 14 of the principal Act shall be omitted.

Amendment of section 17.

7. In section 17 of the principal Act,—

(*a*) in sub-section (*1*), the words "and of the Central Committee" shall be omitted;

(*b*) in sub-section (*2*),—

(*i*) the brackets and letter "(*a*)" shall be omitted;

(*ii*) sub-clause (*b*) shall be omitted;

(*c*) in sub-section (*3*), for the words "or of the Central Committee, each Director or member of the Committee, as the case may be," the words "each Director" shall be substituted;

(*d*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) If for any reason the Chairman is unable to be present at a meeting of the Board, a Director authorised by the Chairman in writing in this behalf, shall preside at that meeting and in default of such authorisation, the Board may elect a Director to preside at that meeting.".

Amendment of section 20.

8. In section 20 of the principal Act, the words "and the Corporation may also subscribe to, or purchase, the shares of any financial institution which the Central Government may, in consultation with the Development Bank, notify in this behalf" shall be added at the end.

9. In section 21 of the principal Act,— Amendment of section 21.

(*a*) in the proviso to sub-section (*1*), for the words "shall not at any time exceed ten times the amount of the paid-up share capital and the reserve fund of the Corporation", the words, figures, letters and brackets "shall not at any time exceed ten times of such amount as is the aggregate of the paid-up share capital, the reserve fund established under sub-section (*1*) of section 32, the special reserve fund established under section 32A, the benevolent reserve fund established under section 32B and any other reserves of the Corporation (not being reserves for bad and doubtful debts or for depreciation of assets or a reserve created or maintained to meet any specific contingency)" shall be substituted;

(*b*) to sub-section (*2*), the following proviso shall be added, namely:—

"Provided that no such guarantee by the Central Government shall be required in respect of such bonds and debentures of the Corporation as are issued to the Development Bank.";

(*c*) in the proviso to sub-section (*4*), for the words "shall not at any time in the aggregate exceed ten times the amount of the paid-up share capital and the reserve fund of the Corporation", the words "shall not at any time exceed, in the aggregate, the limit specified in the proviso to sub-section (*1*)" shall be substituted.

10. After section 21 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 21A and 21B.

"21A. Notwithstanding anything contained in any other law for the time being in force, the bonds and debentures issued or sold by the Corporation shall be, and shall be deemed always to have been, approved securities for the purpose of the Indian Trusts Act, 1882, the Insurance Act, 1938, and the Banking Regulation Act, 1949. Bonds and debentures to be approved securities.

2 of 1882
4 of 1938.
10 of 1949.

21B. The rights and interests of the Corporation (including any other rights incidental thereto) in relation to any loan or advance granted, or any amount recoverable, by it may be transferred by the Corporation, either in whole or in part, by the execution or issue of any instrument, or by the transfer of any instrument by endorsement or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred, and the Corporation may, notwithstanding such transfer, act as the trustee for the transferee.". Power to transfer rights.

11. In section 23 of the principal Act,— Amendment of section 23.

(*a*) in sub-section (*1*),—

(*i*) in clause (*b*), the proviso shall be omitted;

(*ii*) in clause (*d*), the words "and retaining as part of its assets, any stocks, shares, bonds or debentures which it may have to take up in fulfilment of its obligations thereto" shall be inserted at the end;

(*iii*) after clause (*d*), the following clause shall be inserted, namely:—

"(*da*) transferring for consideration any instrument relating to loans and advances granted by it to industrial concerns;";

(*iv*) clause (*h*) shall be omitted;

(*v*) in clause (*i*),—

(*a*) in the proviso, for the words "which may at the option of the Corporation be convertible", the words "the amounts outstanding thereon may be convertible at the option of the Corporation" shall be substituted;

(*b*) after the proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation*.—In this clause, the expression "the amounts outstanding thereon", used in relation to any loan or advance, shall mean the principal, interest and other charges payable on such loan or advance as at the time when the amounts are sought to be converted into stocks or shares;";

(*vi*) in clause (*ii*), the word "and" occurring at the end shall be omitted;

(*vii*) after clause (*ii*) as so amended, the following clause shall be inserted, namely:—

"(*iii*) doing any kind of business which the Central Government may, on the recommendation of the Development Bank, authorise; and";

(*b*) in sub-section (*2*),—

(*i*) for the words, brackets, letters and figure "No accommodation shall be given under clauses (*a*), (*b*), (*c*) and (*i*) of sub-section (*1*), unless it is secured by a sufficient", the words, brackets, letters and figure "In granting accommodation under clause (*a*), clause (*b*), clause (*c*) or clause (*i*) of sub-section (*1*), the Corporation may have it secured by" shall be substituted;

(*ii*) for the words "or unless it is guaranteed", the words "or may have it guaranteed" shall be substituted.

Amendment of section 24.

12. In section 24 of the principal Act, for the words "with a single industrial concern for an amount exceeding two crores of rupees in the aggregate", the words "with any single industrial concern for an amount which, together with the amount outstanding in respect of any arrangement already entered into by the Corporation with that concern, exceeds two crores of rupees in the aggregate" shall be substituted.

13. In section 25 of the principal Act, for sub-section (*2*), the following sub-sections shall be substituted, namely:— Amendment of section 25.

"(*2*) Where any arrangement entered into by the Corporation with an industrial concern provides for the appointment by the Corporation of one or more Directors of such industrial concern, such provision and any appointment of Directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the industrial concern, and any provision regarding share qualification, age limit, number of directorships, removal from office of Directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any Director appointed by the Corporation in pursuance of the arrangement as aforesaid. 1 of 1956.

(*3*) Any Director appointed in pursuance of sub-section (*2*) shall—

(*a*) hold office during the pleasure of the Corporation and may be removed or substituted by any person by order in writing by the Corporation;

(*b*) not incur any obligation or liability by reason only of his being a Director or for anything done or omitted to be done in good faith in the discharge of his duties as a Director or anything in relation thereto;

(*c*) not be liable to retirement by rotation and shall not be taken into account for computing the number of Directors liable to such retirement.".

14. Section 26 of the principal Act shall be re-numbered as sub-section (*1*) of that section and after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:— Amendment of section 26.

'(*2*) The Corporation shall not enter into any kind of business with any industrial concern of which any of the Directors of the Corporation is a Director, manager, agent, employee or guarantor or in which one or more Directors of the Corporation together hold substantial interest:

Provided that this sub-section shall not apply to any industrial concern if any Director of the Corporation—

(*i*) is nominated as a Director on the Board of such concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law, or 1 of 1956.

(*ii*) is elected on the Board of such concern by virtue of shares held in the concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law, 1 of 1956.

by reason only of such nomination or election, as the case may be.

Explanation.—"Substantial interest", in relation to an industrial concern, means the beneficial interest held by one or more of the Directors of the Corporation or by any relative [as defined in clause (*41*) of section 2 of the Companies Act, 1956] of such Director, whether singly or taken together, in the shares of the industrial concern, the aggregate amount paid-up on which either exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the industrial concern, whichever is less. 1 of 1956.

(*3*) The provisions of sub-section (*2*)—

(*i*) shall not apply to any transaction relating to the business entered into prior to the commencement of the Industrial Finance Corporation (Amendment) Act, 1972, and all such business and any transaction in relation thereto may be implemented or continued as if that Act had not come into force;

(*ii*) shall apply only so long as the conditions precedent to such disability as set out in the said sub-section continue.'.

Amendment of section 27.

15. In secion 27 of the principal Act,—

(*a*) for sub-section (*3*) and sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*3*) All loans and advances granted to industrial concerns by the Corporation out of foreign currency borrowed under sub-section (*1*) shall be expressed in terms of foreign currency as equivalent of Indian currency, calculated in accordance with the rate of exchange prevailing at the time of grant thereof, and the amount due thereunder shall be repayable in equivalent Indian currency, calculated in accordance with the rate of exchange prevailing at the time of repayment of such loan or advance.

(*4*) Any loss or profit in connection with any borrowing of foreign currency under sub-section (*1*) for the purpose of granting loans and advances under this Act or with its repayment to the concerned foreign lending agency, on account of any fluctuations in the rate of exchange accruing—

(*a*) during the period within which the loan or advance is repayable by the industrial concern or the period of actual repayment thereof by the concern, whichever is longer, shall be reimbursed by, or paid to, as the case may be, the recipients of such loans and advances;

(*b*) after the expiry of the period specified in clause (*a*),—

(*i*) shall be borne by the Corporation in respect of normal market fluctuations in foreign exchange;

(*ii*) shall be reimbursed by, or paid to, as the case may be, the Central Government in respect of fluctuations other than the normal market fluctuations in foreign exchange.

Explanation.—If any question arises as to whether any fluctuation as aforesaid is a normal market fluctuation or not, the same shall be decided by the Central Government whose decision thereon shall be final.".

Amendment of section 28.

16. In section 28 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after the words "of any loan or advance or any instalment thereof", the words "or in meeting its obligations in relation to any guarantee given by the Corporation" shall be inserted;

(*ii*) for the words "right to take over the management of the concern", the words "right to take over the management, or possession, or both, of the concern" shall be substituted;

(*b*) in sub-section (*3A*),—

(*i*) for the words "Where the management of an industrial concern is taken over by the Corporation or any property is transferred and realised by it", the words "Where any action has been taken against an industrial concern" shall be substituted;

(*ii*) for the words "as incidental to such management, or transfer and realisation", the words "as incidental thereto" shall be substituted;

(*iii*) after the words "which is received by it", the words "from such management, or transfer and realisation" shall be omitted;

(*c*) in sub-section (*4*), after the words "over the management", the words "or possession" shall be inserted.

Amendment of section 30.

17. In section 30 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after the words "any default in repayment of any loan or advance or any instalment thereof", the words "or in meeting its obligations in relation to the guarantee given by the Corporation" shall be inserted;

(*ii*) for the words "the District Judge within the local limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business", the words "the Court" shall be substituted;

(*b*) in sub-sections (*3*) to (*9*), for the words "the District Judge", wherever they occur, the words "the Court" shall be substituted;

(*c*) in sub-section (*9*) as so amended, in the second proviso, for the words "unless the High Court otherwise directs", the words "unless the Court empowered to hear appeals from the decisions of the said Court otherwise directs" shall be substituted;

(*d*) in sub-section (*11*), for the words "appeal to the High Court, and upon such appeal, the High Court may", the words "appeal to

the Court empowered to hear appeals from the decisions of the Court which passed the order and the appellate Court may" shall be substituted;

(*e*) sub-section (*13*) shall be omitted;

(*f*) after sub-section (*13*) as so omitted, the following sub-sections shall be inserted, namely:—

"(*14*) For the removal of doubts, it is hereby declared that any Court competent to grant an *ad interim* injunction under this section shall also have the power to appoint a receiver and to exercise all other powers incidental thereto.

(*15*) All proceedings (whether by way of suits or appeals or other proceedings) under this Act pending before a District Judge or a High Court at the commencement of the Industrial Finance Corporation (Amendment) Act, 1972, shall, on such commencement, be proceeded with and disposed of as if this section had not been amended by the said Act.

(*16*) Every suit or other proceedings which are disposed of in accordance with the provisions contained in sub-section (*15*) or in respect of which time for appeal has not expired at the commencement of the Industrial Finance Corporation (Amendment) Act, 1972, may, on such commencement, be appealed against as if this section had not been amended by the said Act.".

Amendment of section 32

18. In section 32 of the principal Act, in sub-section (2), the second proviso shall be omitted.

Insertion of new section 32B.

19. After section 32A of the principal Act, the following section shall be inserted, namely:—

Benevolent reserve fund.

"32B. (*1*) The Corporation shall establish a special fund, to be called the benevolent reserve fund.

(2) To the benevolent reserve fund shall be credited—

(*a*) any part of the annual profit which may, from time to time, be allocated to the fund;

(b) all amounts received for the purposes of the fund by way of loans, gifts, grants, donations or benefactions from Government or any other source;

(c) income or profits from investments made from the fund;

(*d*) income accruing or arising to the fund by way of interest or otherwise.

(*3*) The benevolent reserve fund shall be used by the Corporation—

(*a*) for meeting the cost of feasibility studies, project reports, market and techno-economic surveys and such other purposes which, in the opinion of the Corporation, may promote the development of industries;

(*b*) in the field of development banking and in financial and industrial management—

(*i*) for undertaking and promoting research;

(*ii*) for training in India or abroad of personnel of financial institutions; and

(*iii*) for creating chairs in universities, academic institutions and research foundations;

(*c*) for assisting projects promoted by technologists and new entrepreneurs—

(*i*) by subsidising the normal lending rate of interest of the Corporation in respect of loans or advances sanctioned to them;

(*ii*) by providing technical and managerial assistance to projects promoted by them especially in less industrially developed regions;

(*d*) for rendering any assistance that may be ancillary or incidental to the aforementioned purposes.".

Amendment of section 39.

20. In section 39 of the principal Act, after the words "Every Director,", the words "member of any Advisory or other Committee," shall be inserted.

Amendment of section 43.

21. In section 43 of the principal Act,—

(*a*) in sub-section (*1*), for the words "after consultation with the Development Bank and with the previous sanction of the Central Government", the words "with the previous approval of the Development Bank" shall be substituted;

(*b*) in sub-section (*2*), in clause (*e*), the words "Central Committee" shall be omitted;

(*c*) sub-section (*3*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

It has been found from experience gained by the Industrial Finance Corporation of India in its working since 1964, when the Act was amended last, that it is necessary further to amend the Act in certain respects.

2. Under section 2(c) of Act, the Corporation is at present authorised only to grant assistance to public limited companies and co-operative societies incorporated in India. Government has decided, as a matter of policy, that public sector industrial undertakings should also be given financial assistance by the public financial institutions in the same manner as is given to companies in the private sector. Since Government is the only shareholder in most of the public sector undertakings, they are invariably incorporated as private limited companies under the Companies Act, 1956. In order to enable the Corporation to extend its assistance to such public sector undertakings, clause 2 of the Bill provides that the Corporation can give assistance to all companies, whether public or private. This will also help newly emerging class of deserving entrepreneurs who generally promote their enterprises as private limited companies in the small and medium scale sector.

3. The Corporation has been expanding its activities and has fully issued its authorised capital of Rs. 10 crores. It is now proposed to increase the authorised capital from Rs. 10 crores to Rs. 20 crores so as to enable the Corporation to expand its activities further. Clause 4 of the Bill provides for the same.

4. The Committee on Public Undertakings which examined the working of the Corporation has in its report to Parliament in April, 1970, recommended the abolition of the Central Committee and Government has accepted the recommendation. Accordingly it is proposed to delete section 14 of the Act by clause 6 of the Bill and make consequential amendments in the other provisions of the Act wherever there is a reference to the Committee.

5. Section 17 *inter alia* provides that no director shall vote on any matter concerning an industrial concern in which he is directly or indirectly interested. The Committee on Public Undertakings in its report observed that the said restrictions are not adequate enough. Having regard to the said recommendations, it is proposed to include some additional restrictive provisions in the Act. By clause 14 of the Bill it is proposed to prohibit the Corporation from granting assistance to any industrial concern in which any director of the Corporation may be having a beneficial interest.

6. Having regard to the fact that the Corporation is now required to incorporate convertibility clauses in the loan agreements entered into by it with the assisted concerns in all cases of significant financial assistance, it is considered no longer necessary to make it obligatory on the Corporation to divest itself of its holdings in the shares and debentures

of assisted industrial concerns, which might have devolved on it as a result of its earlier underwriting operations. Clause 11 seeks to amend section 23 for the purpose.

7. To bring the working of the Corporation in line with the latest thinking in favour of a project-oriented approach in preference to the security-oriented concept, it is proposed to leave the question of taking security to the discretion of the Corporation. Incidentally, this will enable the Corporation to grant assistance on soft terms especially to new entrepreneurs and to industries in backward areas. Clause 11(b) seeks to amend section 23 of the Act suitably.

8. The Corporation normally reserves the power to nominate one or more directors on the Boards of assisted concerns. The amendment to section 25 by clause 13 of the Bill is intended to enable the Corporation to exercise the power more effectively.

9. It is considered necessary to effect certain liberalisation in regard to the liability arising out of fluctuations in the rate of exchange during the period of repayment of foreign currency loans borrowed by the Corporation from foreign lending agencies. At present the liability arising out of fluctuations in foreign exchange is completely borne by the borrowing industrial concerns. The Committee on Public Undertakings recommended that when once a loanee company had repaid the foreign currency loan and discharged its interest liability, it should not be made liable to pay any difference of exchange owing to fluctuations during the currency of the loan to the Corporation from the foreign lending agency. Having regard to the recommendation, it is proposed that the loss arising out of fluctuations in foreign exchange need be borne by the borrowers only so long as they have not discharged their liability completely to the Corporation. After that period, the Corporation will bear the losses arising out of the normal market fluctuations in foreign exchange and the Central Government will bear the losses in respect of fluctuations other than the normal market fluctuations such as devaluation or revaluation of Indian currency in relation to foreign currency as may be adverse to Indian currency. Any profit arising from fluctuations in favour of Indian currency is also proposed to be similarly dealt with.

10. The reserve fund of the Corporation is at present equal to the paid-up capital and it can now declare any dividend subject to a ceiling of 5 per cent. The said ceiling was stipulated at a time when the dividend was eligible to be grossed up under the taxation law. With the change in concept of taxation of dividend, it is felt that the rate is now too low. It is, therefore, proposed to dispense with the ceiling and leave it to the Corporation to declare reasonable dividends based upon its annual working results. Since 1964 the Corporation has been a subsidiary of the Development Bank and the Central Government does not hold any share and therefore, the provision for transferring the surplus to the Central Government has also become incongruous. Clause 18 of the Bill seeks to delete the second proviso to section 32(2) of the Act for the purpose.

11. It is proposed to establish a special Benevolent Fund for certain specific purposes, *viz.*, financing the cost of feasibility studies, subsidising projects promoted by technologists and new entrepreneurs, undertaking research in development banking and such other similar purposes.

12. Section 43 provides that regulations may be framed by the Corporation in consultation with the Development Bank and with the previous sanction of the Central Government. While the Central Government does not now hold any shares in the Corporation, the Development Bank holds 50 per cent. of the shares of the Corporation. It is, therefore, proposed to amend the section so as to dispense with previous sanction of the Central Government and consequently the need to place the regulations on the Table of Parliament.

13. The Bill seeks to achieve these main objects. Opportunity has also been taken to incorporate some other amendments which are found necessary for the smooth working of the Corporation and are of a consequential or procedural nature. The notes on clauses appended to the Bill explain the provisions thereof.

Y. B. CHAVAN

NEW DELHI;
The 29th November, 1972.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F.2(34) (CORP)-IFI/70, dated the 30th November, 1972 from Shri Y. B. Chavan, Minister of Finance, to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Industrial Finance Corporation (Amendment) Bill, 1972, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and for its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 2 defines the expressions "Court" and "State Co-operative Bank" and provides that the Industrial Finance Corporation may finance industrial concerns incorporated also as private limited companies in India.

Clause 3 provides for the increase of the authorised capital of the Corporation from 10 crores of rupees to 20 crores of rupees and for the shares of the Corporation to be transferred to the Reserve Bank also.

Clauses 4 and 5 are consequential to clause 6 of the Bill.

Clause 6 gives effect to the recommendation of the Committee on Public Undertakings, contained in its Report to Parliament in April, 1970, regarding the abolition of the Central Committee of the Corporation.

Clause 7 is consequential to clause 6 of the Bill.

Clause 8 enables the Corporation to subscribe to or purchase the shares of any financial institution, as may be notified by the Central Government in consultation with the Development Bank.

Clause 9 provides that in computing the borrowing powers of the Corporation at ten times the amount being the aggregate of the paid-up capital and reserve fund of the Corporation all the free resources shall also be included. It also provides that the guarantee of the Central Government is not required to be given in respect of bonds and debentures of the Corporation especially issued or sold to the Development Bank.

Clause 10 clarifies that the bonds and debentures of the Corporation are approved securities for certain purposes. It also empowers the Corporation to transfer the instruments relating to loans and advances to other institutions in order to ease the constraints on its resources position.

Clause 11 amends section 23 in several respects. It dispenses with the requirement that the Corporation shall obtain the prior approval of the Central Government in the matter of guaranteeing deferred payments due from industrial concerns in connection with the import of capital goods from India.

It removes the present restrictions on the Corporation to retain shares devolving on it as a result of its underwriting operations beyond a period of seven years.

It clarifies that in the matter of exercising the option of converting loans or advances or debentures into equity capital of the assisted concerns, the total amount including interest outstanding against the concerns could be converted into equity shares.

It enables the Corporation to do any other kind of business which the Central Government on the recommendation of the Development Bank may authorise.

To bring the working of the Corporation in line with the latest thinking in favour of a project-oriented approach in preference to the security-oriented concept, the question of taking security is left to the discretion of the Corporation.

Clause 12 is clarificatory.

Clause 13 enables the Corporation to exercise its power of nomination of directors on the Board of Directors of assisted concerns more effectively.

Clause 14 prohibits the Corporation from granting assistance to any industrial concern in which any director of the Corporation may be having a beneficial interest.

Clause 15 gives effect to the recommendation of the Committee on Public Undertakings contained in its Report to Parliament in April, 1970 and liberalises section 27 of the Act in regard to the liability arising out of fluctuations in the rate of exchange during the period of repayment of foreign currency loans borrowed by the Corporation from foreign lending agencies.

Clauses 16 *and* 17 enable the Corporation to effectively realise its outstanding dues from a defaulting industrial concern, by applying directly to the concerned High Court within the limits of whose jurisdiction the concern carries on the whole or a substantial part of its business instead of to the concerned District Judge.

Clause 18 amends section 32 of the Act to remove the ceiling of five per cent. on the dividends which may be declared by the Corporation once its reserve fund equals its paid-up capital and also to dispense with the requirement of the Corporation transferring the surplus of its profits after declaration of dividend to the Central Government, as the latter does not any longer hold any shares in the Corporation.

Clause 19 provides for the establishment of a Special Benevolent Fund to undertake certain developmental functions by the Corporation.

Clause 20 provides that the members of any Advisory Committee set up by the Corporation shall also take the oath of fidelity and secrecy.

Clause 21 dispenses with the previous sanction of the Central Government to the regulations framed by the Corporation and consequently the need to place the regulations on the Table of Parliament, as the Central Government does not hold any shares in the Corporation.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to increase the authorised capital of the Corporation from ten crores of rupees to twenty crores of rupees. Since under section 5 of the Act the shares of the Corporation shall be guaranteed by the Central Government as to the repayment of the principal and the payment of an annual dividend at such minimum rate as may be fixed by the Central Government at the time of issuing the shares, if the Corporation were to issue further share capital out of the increased authorised capital, the Central Government may have to give similar guarantee for the capital issued.

2. Clause 9 of the Bill seeks to amend section 21 of the Act to enhance the borrowing power of the Corporation. As a consequence, it is likely that the Corporation may be able to raise more bonds and debentures. Under sub-section (2) of that section, the liabilities under the bonds and debentures of the Corporation are to be guaranteed by the Central Government. It is, therefore, likely that its liabilities in respect of guarantees will also be increased.

3. Clause 15 of the Bill seeking to amend sub-sections (3) and (4) of section 27 provides that the Central Government may, in certain circumstances, have to bear the loss in respect of fluctuations other than the normal market fluctuations in foreign exchange in respect of foreign currency loans borrowed by the Corporation from the foreign lending agencies. It is, however, not possible at this stage to anticipate when or how such losses which are to be borne by the Central Government would arise nor to indicate the amount which may be involved, as the loss is contingent on fluctuations other than the normal market fluctuations arising in foreign exchange between Indian and foreign currency, such as, devaluation of Indian currency or revaluation of foreign currency. If and when such losses come to be borne by the Central Government, the same will have to be covered by appropriate budget sanction at the relevant time.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill provides that the Corporation may subscribe to or purchase the shares of any financial institution which the Central Government may, in consultation with the Development Bank, notify in this behalf.

2. Under section 43 of the Act, the Board may, after consultation with the Development Bank and with the previous sanction of the Central Government, make the regulations While the Central Government does not now hold any shares in the Corporation, the Development Bank holds fifty per cent. of the shares of the Corporation it is proposed to dispense with the previous sanction of the Central Government and consequently also the need to place the regulations on the Table of Parliament.

3. The matters in respect of which power is conferred on the Central Government or on the Board under clauses 8 and 21 relate to the day to day administration of the Corporation or to the implementation of the policy which is already embodied in the Bill and the delegation of legislative power is of a normal character.

S. L. SHAKDHER,
Secretary.

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